

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 CIVIL APPLICATION NO.14410 OF 2022

IN WP/10461/2021

WITH

WRIT PETITION NO. 10461 OF 2021

THE VAIDYANATH URBAN CO OP BANK LTD PARALI VAIJANATH
VERSUS

M/S KAPRE GENERAL STORES THROUGH ITS PROP.
SANDEEP VIJAYKUMAR KAPRE

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Advocate for Applicant : Mr. V. P. Golewar h/for Mr. A. R. Joshi

AGP for the State: Mr. A.R. Kale

Advocate for Respondent/petitioner: Mr. Suvidh S. Kulkarni

**CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRADE, JJ.**

DATE : 19TH OCTOBER, 2022

ORDER:

1. Heard learned Advocate for the applicant as well as the respondent. The respondent is the original petitioner and when he filed Writ Petition No. 10461/2021, this Court had passed following order on 22.09.2021. (Only relevant extract is reproduced).

“4. We are not inclined to stall the auction proceeding. The auction proceeding may proceed further. However, the same shall not be finalized till the next date on condition that the petitioner pays an amount of Rs.10,00,000/- (Rupees Ten Lakh Only) within a period of two weeks from today and another amount of Rs.6,00,000/- (Rupees Six Lakh Only) within a period of two weeks thereafter. The payment of the amount as directed above is condition precedent. Failure to deposit any of the installments as directed above, would entail the interim orders being vacated automatically.”

2. Learned counsel for the applicant-Bank submits that when the publication about auction was given in the newspaper on 04.05.2022, it has been objected by the respondent by giving further publication on 10.05.2022 as if there was blanket stay granted to the auction thereby, the petitioner intends to stall the auction proceedings which was in fact not allowed by this Court by order dated 22.09.2021. Learned counsel for the applicant also points out that the petitioner had also approached this Court by filing Writ Petition No. 966 of 2021 and it appears that by order dated 19.01.2021, he was directed to deposit Rs.20 lakhs within a period of 2 weeks. He had not deposited it and therefore, by order dated 9th March, 2021, since nobody appeared for the petitioner as well as the fact of non deposit of amount as per order dated 19.01.2021 was noticed, the said writ petition was dismissed for non prosecution and this fact has been suppressed in the present petition. On this ground, the applicant Bank has prayed for vacating the interim relief granted by this Court by order dated 22.09.2021 as well as 17.12.2021. Further prayer also being made that the respondent/original petitioner be directed to deposit an amount of Rs.25 lakhs with the Bank immediately.

3. Learned counsel for the original petitioner vehemently submitted that for the objection taken by way of publication dated 10.05.2022, if the Court comes to the conclusion that there was an

attempt by the petitioner to stall the auction proceedings, the petitioner is tendering unconditional apology, however, the entire anxiety of the petitioner was that, there was no statement in the publication that was given i.e. the auction notice, that there was writ petition filed by the petitioner before this Court so also the grounds those have been made in the petition that the valuation report has not been taken and the upset price in view of Rule 107 of MCS Rules have also not been got fixed. Therefore, the auction notice issued by the Bank is bad in law, illegal and erroneous. He also submitted that he personally is not aware about the fact in Writ Petition No. 966 of 2021 of which order has been tendered across the Bar and he will have to take instructions in respect of the same.

4. At the outset, it is to be noted that this Court had passed conditional order on 22.09.2021. It was specifically expressed that this Court is not of the view that the auction should be stalled rather it was stated that the auction proceedings may proceed further, however, it shall not be finalized till next date and it was subject to condition that the petitioner shall deposit an amount of Rs.10 lakhs within a period of two weeks and further amount of Rs.6 lakhs within a period of two weeks thereafter. It appears that the petitioner deposited the amount of Rs.10 lakhs within a period of two weeks from 22.09.2021. However, as regards the further amount of Rs.6 lakhs is concerned, he had

approached this Court and got the period extended. Accordingly it was extended. As on today, it appears that towards the transaction in question, the petitioner has deposited an amount of Rs.16 lakhs.

5. The petitioner cannot insist as to what should be stated in the auction notice by the Bank. It cannot be said that it is mandatory on the part of the Bank to mention the writ petition number in the said notice. However, when the Bank was supposed to take the further proceedings subject to further orders to be passed in the writ petition, at least it would be expected that the Bank should disclose pendency of the writ petition to the proposed purchasers. Definitely it would also be responsibility of the proposed purchasers to know whether any legal proceedings are pending in respect of the property which is put to sale. The wordings those have been used in the objection notice on behalf of the original petitioner dated 10.05.2022 are definitely objectionable. There was no injunction or restriction put by this Court in respect of the auction and to that extent, wrong statements have been made rather, as aforesaid, this Court had allowed the auction proceedings to go on. The only rider was, not to finalize the same. If at all the petitioner wanted to bring the fact about pendency of the writ petition to the notice of the proposed purchasers, the notice could have reproduced the order that has been passed by this Court and not his

own interpretation. Now, unconditional apology has been tendered. By such act, the petitioner cannot stall the auction.

6. As regards the earlier writ petition and its effect on the present writ petition, the parties are at liberty to take their own stand because only on the basis of the order passed by this Court on 9th March, 2021, at this stage, we may not observe further things.

7. The petitioner intends to challenge the auction notice dated 27.08.2021 in the main petition as well as objections in the form of representation dated 07.09.2021 which have not been considered by respondent no.3.

8. Now, it appears that further auction notice was given on 04.05.2022. Still, it appears that the objections taken in the petition are the same i.e. valuation report has not been submitted of the year 2021 and also that the upset price has not been got fixed in view of Rule 107 of the MCS Rules. When the main petition is pending for the challenge of this ground, this will not be a fit case where the interim relief granted by this Court should be vacated in its entirety. We find it patent proper to permit the applicant Bank to go ahead with the auction proceedings, however, not to finalize the same till further orders by this Court and we may take up Writ Petition No. 10461 of 2021 for its

final disposal, if the Bank files say/affidavit in reply as early as possible.

Hence we pass following order:

O R D E R

- i. The civil application is partly allowed.
- ii. The applicant bank may proceed with the auction and should not be stalled by the petitioner in any manner and the said auction shall not be finalized till further orders from this Court.
- iii. Hearing of writ petition No. 10461 of 2021 stands expedited.
- iv. The applicant/Original respondent 1 to file affidavit in reply on or before 18.11.2022.
- v. Place the writ petition for further consideration on 21.11.2022.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan